IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2400 OF 2001

Ashok Madhavrao Deshmukh
Type VI-2 Gulmohar
RCF Colony, Chembur,
Mumbai 400 074. Petitioner

vs.

1. Rashtriya Chemicals & Fertilizers
Ltd., "Priyadarshini",
Eastern Express Highway,
Sion, Mumbai 400 022.

2. Shri D.K.Varma,
Chairman & Managing Director,
Rashitriya Chemicals & Fertilizers Ltd.
"Priyadarshini",
Eastern Express Highway,
Sion, Mumbai 400 0222. Respondents

Mr.A.Y.Sakhare, Sr.Counsel with Mr.Siddharth Kapre for
the petitioner.

Mr.Girish Kulkarni with Ms.Swati Deshpande
i/b.M/s.M.S.Bodhanwala & Co. for respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 17th November, 2006

ORAL JUDGMENT (Per Anoop V. Mohta,J.).

The petitioner, who is now retired as an Executive Director of respondent no.1-Rashtriya Chemicals & Fertilizers Ltd., has challenged the decision to retire him from the service with effect from 31st October, 2001, on attaining the superannuation age of 58 years. The same was communicated by a letter dated 13th September 2001 by respondent no.1 wherein also he was informed that his application dated 10th September 2001

requesting to grant continuity in service till 60 years has been rejected.

2. The petitioner was working as an Executive Director on the date of filing the present petition i.e. 20th September, 2001. Respondent no.1 is a Government company of Government of India ("the Government"). Respondent no.2 was Chairman & Managing Director of respondent no.1. The Government, vide office memo dated 19th May 1998 enhanced the age of retirement of the employees of the company from 58 to 60 years retrospectively, with effect from 31st May 1998, subject to a review of performance and physical fitness of such employees, on attaining the age of 58 years by a constituted Committee.

. Based on an order/consent term dated 22nd January 1999 between the parties, Rule 9 of the RCF Employees (Conduct, Discipline & Appeal) Rules, 1993 (for short, "the Rules") was amended. Rule 9 refers to Rule 10 of the Rules. The said rule reads as follows:

> "9. Every employee shall retire from the service of the company on the last day of the calendar month in which he attains the age of 60 years subject to a review of medical fitness, efficiency and integrity being conducted at the age of 58 years. The review of medical fitness, efficiency and integrity and the consequences thereof shall be as provided in Rule 10."

3. By an order dated 22nd July 1998, signed by respondent no.2, a show cause notice was issued, based on certain investigation carried out since 1995, by the Vigilance Department of the company. The petitioner replied to the said show cause notice on 5th August 1998. After a year, the petitioner was chargesheeted vide memo dated 23rd July, 1999. The petitioner replied to the said chargesheet. The Inquiry Officer was appointed on 20th April 2000. The petitioner submitted his written submission on 26th February 2001. On the date of filing of the present petition the enquiry report was awaited.

4. On attaining the age of 58 years, on 11th October 2001, the petitioners' medical check up was done. On 20th August 2001, respondent no.1, informed the petitioner that the Board of Directors had decided not to give an extension from 58 to 60 years because of the pending enquiry against him.

5. By a letter dated 3rd September 2001, the petitioner was intimated that the Board of Directors had reviewed his case and did not find his case suitable for enhancement in superannuation age and further that he would stand superannuated with effect from 31st October 2001, at the age of 58 years. The petitioner therefore,

by letter dated 10th September 2001 requested for the reasons for the same.

6. By the impugned letter dated 13th September 2001 the respondents re-affirmed their decision in the following words:

> "The decision of the Board of Directors retiring you from the services of the company w.e.f. 31st October, 2001 on attaining the superannuation age of 58 years is in accordance with the Rules of the company framed for the said purpose.
>
> The pending disciplinary proceedings against you under the aegis of the Central Vigilance Commission and your past performance have been taken into account whilst taking the said decision."
>
> (Emphasis added.)

7. The petitioner therefore on 20th September 2001 filed the present writ petition. The petitioner, pending the present writ petition has attained the age of 58 years, on 31st October 2001. There was no ad-interim order passed in favour of the petitioner.

8. The petitioner has prayed to set aside the impugned order dated 3rd September 2001 and to give effect to the decision of the Board of Directors dated 28th September, 1998, to extend the age of superannuation upto 60. The contents of the said circular is as follows:

> "The Management is pleased to raise the age of

> Superannuation of all the employees of the Company from 58 years to 60 years w.e.f. 31st May, 1998 subject to a review of the performance and physical fitness of each employee on attaining the age of 58 years, by a Constituted Committee."

9. Indisputably, as per the circular and rules 9 and 10, a review of the performance and physical fitness of each employee on attaining the age 58 years by a Constituted Committee are the basic conditions. There was no automatic enhancement of age. It was subject to above prerequisites. Therefore, the respondents after considering the material available on the record including a pending department proceedings and the C.R. of three years, by the impugned order dated 13th September 2001, refused to extend the benefit of the circular and rules and directed the petitioner to retire from the service of the company w.e.f. 31st October, 2001, on attaining the age of 58 years. We find there is nothing wrong in taking the decision by the respondents, on the facts and circumstances of the case considering his record which was made available to us. The decision was well within the framework of the rules 9 & 10 and the circular.

10. We have also, with the assistance of the counsel appearing for the parties perused the three years C.R. of the petitioner as a contention was raised that there was no material before the Board of Directors before

taking such decision. We found that, the respondents while taking the decision, have considered the past performance of the petitioner, apart from the pending disciplinary proceeding. The view as taken by the concerned respondents was possible view. Merely because there is no mention that the past record was considered in the order rejecting extension cannot be said to mean that there was non-application of mind. The agenda of the meeting where the case of the petitioner was considered was also placed before us. That would show that the C.Rs were considered. At any rate it cannot be termed as perverse or without material or bad in law.

11. Taking all into account, we see no reason to interfere with the impugned decision. The petition is accordingly dismissed. No costs.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)